

March 22, 2023

VIA ELECTRONIC MAIL TO: thomas.nimbley@pbfenergy.com

Mr. Thomas Nimbley
Chairman and Chief Executive Officer
PBF Energy Inc.
1 Sylvan Way, Second Floor
Parsippany, New Jersey 07054

Re: CPF No. 1-2022-028-NOPV

Dear Mr. Nimbley:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, withdraws one allegation, assesses a reduced civil penalty of \$65,900, and specifies actions that need to be taken by Toledo Refining Company LLC, a subsidiary of PBF Energy Inc., to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order are completed, as determined by the Director, Eastern Region, this enforcement action will be closed. Service of the Final Order by e-mail is effective upon the date of transmission and acknowledgement of receipt as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Robert Burrough, Director, Eastern Region, Office of Pipeline Safety, PHMSA
Mr. Gregory Thomas, Senior Logistics and Compliance Coordinator, Toledo Refining
Company LLC, gregory.thomas@pbfenergy.com

Mr. Michael Gudgeon, Refinery Manager, Toledo Refining Company LLC,
michael.gudgeon@pbfenergy.com

CONFIRMATION OF RECEIPT REQUESTED

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

In the Matter of	)	
	)	
	)	
Toledo Refining Company LLC,	)	CPF No. 1-2022-028-NOPV
a subsidiary of PBF Energy Inc.,	)	
	)	
Respondent.	)	
	)	

FINAL ORDER

From August 9 through September 15, 2021, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of Toledo Refining Company LLC (TRC or Respondent) in Toledo, Ohio. TRC, a subsidiary of PBF Energy Inc., operates the Toledo Refinery, including a pipeline that transports crude oil from the main refinery to the marine terminal.¹

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated March 31, 2022, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that TRC committed four violations of 49 C.F.R. Part 195, proposed assessing a civil penalty of \$81,400 for the alleged violations, and proposed ordering Respondent to take certain measures to correct the alleged violations. The Notice also included an additional four warning items pursuant to 49 C.F.R. § 190.205, which warned the operator to correct the probable violations or face possible future enforcement action.

After requesting and receiving an extension of time to respond, TRC responded to the Notice by letter dated May 31, 2022 (Response). TRC contested several of the allegations, offered additional information in response to the Notice, and requested that the proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

¹ See Pipeline Safety Violation Report (Violation Report), at 1 (on file with PHMSA); *see also* PBF Energy Inc. website, available at <https://www.pbfenergy.com/refineries/> (last accessed March 13, 2023).

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.61(a)(1), which states:

§ 195.61 National Pipeline Mapping System.

(a) Each operator of a hazardous liquid pipeline facility must provide the following geospatial data to PHMSA for that facility:

(1) Geospatial data, attributes, metadata and transmittal letter appropriate for use in the National Pipeline Mapping System. Acceptable formats and additional information are specified in the NPMS Operator Standards manual available at www.npms.phmsa.dot.gov or by contacting the PHMSA Geographic Information Systems Manager at (202) 366-4595.

The Notice alleged that Respondent violated 49 C.F.R. § 195.61(a)(1) by failing to provide to PHMSA geospatial data appropriate for use in the National Pipeline Mapping System (NPMS). Specifically, the Notice alleged that TRC failed to provide accurate geospatial data of its pipeline facilities when it reported an abandoned pipeline as active.

In its Response, TRC contested the allegation of violation. Specifically, TRC argued that the pipeline was not abandoned, but was taken out-of-service and idled.² As TRC acknowledged in its Response, PHMSA regulations do not recognize an “idled” pipeline status.³ Pipelines are active until they are abandoned. A pipeline is abandoned when it is “permanently removed from service.”⁴

During the inspection, TRC personnel indicated to the PHMSA inspector that the pipeline was believed to be formally abandoned in 2009 by the prior operator.⁵ In its Response, however, TRC clarified that the prior operator actually considered the line as being “Out-of-Service, Long Term” and not abandoned.⁶ Accordingly, TRC argued it was not improper to continue reporting the pipeline as active.⁷ Going forward, TRC stated that it has now decided to permanently abandon the pipeline and noted that it would document and report the abandonment according to the applicable regulations.

² Response, at 2.

³ See PHMSA Advisory Bulletin “Pipeline Safety: Clarification of Terms Relating to Pipeline Operational Status,” 81 FR 54512, Aug. 16, 2016 (explaining that “PHMSA regulations do not recognize an ‘idle’ status for hazardous liquid or gas pipelines. The regulations consider pipelines to be either active and fully subject to all relevant parts of the safety regulations or abandoned).

⁴ 49 C.F.R. § 195.2. For a further discussion of pipeline status reporting for NPMS, See National Pipeline Mapping System Standards for Pipeline, Liquified Natural Gas and Breakout Tank Operator Submissions, October 2017, available at https://www.npms.phmsa.dot.gov/Documents/Operator_Standards.pdf.

⁵ Notice, at 2 (“Toledo stated that the 6-inch 16-233 hazardous liquid dock line (Line 16-233), acquired by Toledo in 2011, was believed to be formally abandoned and removed from service in 2009 by its prior operator”).

⁶ Response, at 2.

⁷ TRC further asserted that in 2016, PHMSA “modified their definitions” of active and abandoned. This assertion is not accurate. In 2016, PHMSA issued an advisory bulletin reminding operators that idled pipelines were still active and were required to comply with applicable safety regulations until they were abandoned. The advisory bulletin did not change the meaning of active and abandoned.

Having considered the record, I find the prior operator's treatment of the pipeline, which included purging it of product, deploying a nitrogen blanket, and capping the ends, did not constitute abandonment because the pipeline was only considered to be out-of-service. This treatment could be reversed in order to allow the pipeline to be used in the future. Since there is insufficient evidence to prove the pipeline had been permanently abandoned, I do not find Respondent was incorrect in reporting the pipeline as active. Accordingly, after considering all of the evidence, I find that Respondent did not violate 49 C.F.R. § 195.61(a)(1) as alleged in the Notice. Based upon the foregoing, I hereby order that Item 2 be withdrawn.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.403(c), which states:

§ 195.403 Emergency response training.

(a) . . .

(c) Each operator shall require and verify that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures established under 195.402 for which they are responsible to ensure compliance.

The Notice alleged that Respondent violated 49 C.F.R. § 195.403(c) by failing to require and verify that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures established under § 195.402 for which they are responsible to ensure compliance. Specifically, the Notice alleged that during the PHMSA inspection, TRC failed to provide any records demonstrating that it verified its supervisors maintained requisite knowledge of its emergency response procedures for which they are responsible to ensure compliance.⁸

Respondent did not contest this allegation of violation.⁹ Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.403(c) by failing to require and verify that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures established under § 195.402 for which they are responsible to ensure compliance.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.406(a), which states:

§ 195.406 Maximum operating pressure.

(a) Except for surge pressures and other variations from normal operations, no operator may operate a pipeline at a pressure that exceeds any of the following:

(1) The internal design pressure of the pipe determined in accordance with § 195.106. However, for steel pipe in pipelines being converted under § 195.5, if one or more factors of the design formula (§ 195.106) are unknown, one of the following pressures is to be used as design pressure:

⁸ See Notice at 4 (stating that TRC's "sign-in sheets" from training sessions failed to demonstrate what topics supervisors were trained on).

⁹ Response, at 3.

(i) Eighty percent of the first test pressure that produces yield under section N5.0 of appendix N of ASME/ANSI B31.8 (incorporated by reference, *see* § 195.3), reduced by the appropriate factors in §§ 195.106 (a) and (e); or

(ii) If the pipe is 12 3/4 inch (324 mm) or less outside diameter and is not tested to yield under this paragraph, 200 p.s.i. (1379 kPa) gage.

(2) The design pressure of any other component of the pipeline.

(3) Eighty percent of the test pressure for any part of the pipeline which has been pressure tested under subpart E of this part.

(4) Eighty percent of the factory test pressure or of the prototype test pressure for any individually installed component which is excepted from testing under § 195.305.

(5) For pipelines under §§ 195.302(b)(1) and (b)(2)(i) that have not been pressure tested under subpart E of this part, 80 percent of the test pressure or highest operating pressure to which the pipeline was subjected for 4 or more continuous hours that can be demonstrated by recording charts or logs made at the time the test or operations were conducted.

The Notice alleged that Respondent violated 49 C.F.R. § 195.406(a) by operating a pipeline at a pressure that exceeds the maximum operating pressure (MOP) of the pipeline. Specifically, the Notice alleged that during the PHMSA inspection, TRC could not provide records to demonstrate that it had established the MOP in accordance with the requirements set forth in § 195.406(a).¹⁰

In its Response, TRC contested the allegation of violation, and explained that it previously provided its MOP calculation in an email to PHMSA during the inspection.¹¹ Although TRC provided an MOP calculation to PHMSA, it failed to include certain details required by § 195.406(a). For example, the MOP calculation failed to confirm the lowest design pressures of all components on the pipeline pursuant to § 195.406(a)(2) and lacked detail regarding the applicability of the requirements of § 195.406(a)(4). Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.406(a) by operating a pipeline at a pressure that exceeds the MOP of the pipeline.

Item 8: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(i)(3), which states:

§ 195.452 Integrity management.

(a) . . .

(i) *What preventive and mitigative measures must an operator take to protect the high consequence area?*

(1) . . .

¹⁰ See Notice, at 5 (stating that “[n]one of the documents provided by [TRC] included details of an overall calculation of the MOP on the pipeline considering all factors required by § 195.406(a). When PHMSA asked for additional information regarding records related to calculation of the MOP on the pipeline, Toledo did not provide any additional information. Toledo stated that the MOP was 701 psi but did not have a calculation to support that assertion”).

¹¹ Response, at 4 and Attachment 8.

(3) *Leak detection.* An operator must have a means to detect leaks on its pipeline system. An operator must evaluate the capability of its leak detection means and modify, as necessary, to protect the high consequence area. An operator's evaluation must, at least, consider, the following factors - length and size of the pipeline, type of product carried, the pipeline's proximity to the high consequence area, the swiftness of leak detection, location of nearest response personnel, leak history, and risk assessment results.

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(i)(3) by failing to evaluate the capability of its leak detection means and modify, as necessary, to protect the high consequence area. Specifically, the Notice alleged that during the PHMSA inspection, TRC failed to provide any records demonstrating that it conducted a leak detection analysis that considered, at a minimum, all the factors set forth in § 195.452(i)(3).

Respondent did not contest this allegation of violation.¹² Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.452(i)(3) by failing to evaluate the capability of its leak detection means and modify, as necessary, to protect the high consequence area.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.¹³

In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; any effect that the penalty may have on its ability to continue doing business; the good faith of Respondent in attempting to comply with the pipeline safety regulations; and self-disclosure or actions to correct a violation prior to discovery by PHMSA. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$81,400 for the violations cited above.

Item 4: The Notice proposed a civil penalty of \$19,300 for Respondent's violation of 49 C.F.R. § 195.403(c), for failing to require and verify that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures established under § 195.402 for which they

¹² Response, at 5.

¹³ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223 for adjusted amounts.

are response to ensure compliance. In its Response, TRC requested a reduction in the civil penalty because it believed the penalty was excessive, and it took action to correct the non-compliance after the PHMSA inspection.¹⁴ Addressing the noncompliance post-inspection, however, does not entitle Respondent a civil penalty credit, as PHMSA has previously determined in other cases.¹⁵

Pipeline safety was minimally affected, which is appropriate reflected in the proposed civil penalty amount. TRC failed to comply with an applicable requirement, and did not provide a reasonable justification for its failure to do so. Based upon the foregoing, I assess Respondent a civil penalty of \$19,300 for violation of 49 C.F.R. § 195.403(c).

Item 5: The Notice proposed a civil penalty of \$15,500 for Respondent’s violation of 49 C.F.R. § 195.406(a), for operating a pipeline at a pressure that exceeds the MOP of the pipeline. In its Response, TRC requested a reduction in the civil penalty because it believed the penalty was excessive, and it took action to correct the non-compliance after the PHMSA inspection.¹⁶ In a recommendation for final action submitted pursuant to § 190.209(b)(7), the Director recommended withdrawing the penalty for this violation in consideration of the additional MOP calculations that were provided that, while not fully compliant, demonstrated there was minimal impact on pipeline safety. Based upon the foregoing, I hereby withdraw the proposed penalty for violation of 49 C.F.R. § 195.406(a).

Item 8: The Notice proposed a civil penalty of \$46,600 for Respondent’s violation of 49 C.F.R. § 195.452(i)(3), for failing to evaluate the capability of its leak detection means and modify, as necessary, to protect the high consequence area. In its Response, TRC requested a reduction in the civil penalty because it believed the penalty was excessive, and it took action to correct the non-compliance after the PHMSA inspection.¹⁷ As noted above, however, operators do not receive a credit by taking action to correct the non-compliance after the PHMSA has already identified the violation during an inspection. This violation occurred in a high consequence area,

¹⁴ Response, at 3 and 5.

¹⁵ See *In the Matter of North Dakota Pipeline Company, LLC, a subsidiary of Enbridge Inc., Respondent*, Final Order, CPF No. 3-2022-022-NOPV, 2022 WL 18033746 at *2 (Dec. 19, 2022) (“Next, while PHMSA appreciates Respondent’s swift corrective measures to comply with pipeline safety regulations, such actions taken after an inspection are not a basis to reduce a civil penalty”) (Citing *In the Matter of Oasis Midstream Partners LP, a General Partner of Oasis Petroleum Inc.*, Final Order 3-2019-5020, 2020 WL 6870720 at 7 (August 19, 2020) (“While Oasis is to be commended for improving its internal processes to ensure compliance with the pipeline safety regulations, such post-inspection activities do not warrant the withdrawal of, or a reduction in, a proposed civil penalty”)); *In the Matter of Eastern Shore Natural Gas Company, a subsidiary of Chesapeake Utilities Corporation, Respondent*, Final Order, CPF No. No. 1-2017-1002, 2018 WL 1365570 at *2 (Feb. 9, 2018) (“Respondent’s post-inspection corrective actions are duly noted, but do not constitute grounds to reduce the penalty because they were taken after PHMSA had already identified the violation”); and Violation Report at 13 (providing for credits when “[a]fter the operator found the non-compliance, the operator took documented action to address the cause of the non-compliance, and was in the process of correcting the non-compliance *before PHMSA learned of the violation*” and “After the operator found the non-compliance, the operator took documented action to address the cause of the non-compliance, and corrected the non-compliance *before PHMSA learned of the violation.*”) (emphasis added).

¹⁶ Response, at 4 and 5.

¹⁷ Response, at 5.

and TRC failed to provide a reasonable justification for its noncompliance with an applicable requirement. Based upon the foregoing, I assess Respondent a civil penalty of \$46,600 for violation of 49 C.F.R. § 195.452(i)(3).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$65,900**.

Payment of the civil penalty must be made within 20 days after receipt of this Final Order. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a district court of the United States.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 2 and 5 in the Notice for violations of 49 C.F.R. §§ 195.61(a)(1), and 195.406(a), respectively. As discussed above, Item 2 has been withdrawn. Therefore, the compliance terms proposed in the Notice for that Item are not included in this Order. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601.

Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.406(a) (**Item 5**), Respondent must review the entirety of its historical records and pipe characteristics and provide a written justification which confirms the MOP of its pipeline is 701 psi in accordance with 49 C.F.R. § 195.406(a)(1)-(5) within 60 days of receipt of the Final Order. If TRC is unable to confirm through records that this MOP is valid and complies with § 195.406(a)(1)-(5), TRC must take additional measures on the pipeline such as investigating its pipe characteristics or reducing the pipeline MOP, until the pipeline MOP is able to be confirmed via a substantive record.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

PHMSA requests that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. It is requested that these costs be reported in two categories: (1) total cost associated with preparation/revision of plans, procedures, studies and analyses; and (2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (*see* 49 C.F.R. § 190.223), for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

WARNING ITEMS

With respect to Items 1, 3, 6, and 7, the Notice alleged probable violations of Parts 194 and 195 but identified them as warning items pursuant to § 190.205. The warnings were for:

49 C.F.R. § 194.107(c)(1)(viii) **(Item 1)** — Respondent's alleged failure to follow its response plan regarding response equipment testing;

49 C.F.R. § 195.402(a) **(Item 3)** — Respondent's alleged failure to prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies;

49 C.F.R. § 195.404(c)(3) **(Item 6)** — Respondent's alleged failure to maintain a record of each inspection and test required by Subpart F of Part 195 for at least two years or until the next inspection or test is performed, whichever is longer; and

49 C.F.R. § 195.452(b)(5) **(Item 7)** — Respondent's alleged failure to implement and follow its integrity management program.

TRC presented information in its Response disagreeing with certain allegations and showing that it had taken certain actions to address the cited items. Under § 190.205, PHMSA does not adjudicate warning items to determine whether a probable violation occurred. If OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. The written petition must be received no later than 20 days after receipt of the Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a

petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

March 22, 2023

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued